

FILED

July 16 2010

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

JUL 15 2010

CLERK OF THE SUPREME COURT
STATE OF MONTANA

BEFORE THE COMMISSION ON PRACTICE OF THE
SUPREME COURT OF THE STATE OF MONTANA

In the Matter of

DAL SMILIE,
An Attorney at Law

) Supreme Court Cause No. PR10-0108
) ODC File No. 10-049
)
)

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FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND RECOMMENDATION

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STATE OF MONTANA

This matter came on regularly for hearing before an Adjudicatory Panel of the Commission on Practice of the Supreme Court of the State of Montana ("Commission") on May 20, 2010. Commissioners present and participating were Tracy Axelberg, Stephen R. Brown, Jr., Sarah R. Etchart, James F. Jacobsen, Richard A. Ochsner, Jon Oldenburg, Ward E. Taleff, and John Warren. Disciplinary Counsel, Mr. Shaun Thompson, appeared. Respondent appeared represented by his attorney, Mr. Gregory A. Jackson.

Respondent admitted the allegations of the *Complaint*. Without objection the Commission admitted ODC's Exhibits 1, 2, and 3, and Respondent's Exhibits A, B, C, and D. Thereafter, the Commission received oral and written argument from the parties addressing the appropriate discipline to be imposed. The matter having been submitted,

the Commission makes and enters the following:

Findings of Fact

1. Respondent is an attorney subject to the disciplinary jurisdiction of the Supreme Court of the State of Montana.
2. Respondent practiced law in Montana from 1978 to 2008, initially for a Great Falls law firm, then as a Senior Staff Attorney for the Montana Department of Social and Rehabilitation Services, and finally for 18 years as the Chief Legal Counsel for the Montana Department of Administration.¹
3. Respondent's non-lawyer activities included his membership in, and volunteer services for, the American Motorcycle Association ("AMA"). As an AMA volunteer, he traveled extensively, enlisted approximately 14,000 members, and contributed both money and ephemera to its causes. He was elected to the AMA's board of directors in 1981 and served as chair of its Board of Directors.
4. Respondent's position with the AMA entitled him to reimbursement for his travel expenses. During the later years of his service to the AMA he submitted inflated expense claims. About 2007 the AMA discovered Respondent's scheme and confronted him. On July 14, 2008, Respondent and the AMA executed a *Settlement Agreement and Release of All Claims* by which Respondent paid the AMA \$100,000.²
5. On August 22, 2008, Respondent was charged with theft and receiving stolen

¹ See Exhibit A.

² See Exhibit B and Respondent's *Hearing Memorandum*, p. 2.

property in Ohio, the state of the AMA's headquarters.³

6. On February 22, 2010, Respondent pleaded guilty to, and was convicted of, the crimes of theft and receiving stolen property. Both crimes were felonies. The value of the property Respondent stole exceeded \$100,000. The Ohio court sentenced Respondent to 3 years in prison for the theft, 8 months in prison for receiving stolen property, and fined him \$1,000. Respondent served 35 days in the Ohio Correctional Center. Thereafter, pursuant to Ohio criminal procedural law, Respondent petitioned for, and was granted, a judicial release subject to 24 months of supervision in a community setting. Respondent's judicial release under Ohio criminal procedure shares similarities with Montana's deferred imposition of sentence.⁴

7. Respondent resides at Helena, Montana. His supervision has been transferred to Montana. He is employed by the Park Avenue Bakery.

8. By an order dated March 17, 2010, the Supreme Court of the State of Montana concluded that Respondent had been convicted of an offense that affects his ability to practice law within the meaning of Rule 23B, MRLDE, and, *inter alia*, ordered him immediately suspended from the practice of law pending final disposition of a disciplinary proceeding predicated upon Respondent's conviction.

9. Respondent argued his appropriate discipline should be an indefinite suspension, either for a definite period or an indefinite period with a fixed minimum

³ See Exhibit 1.

⁴ See Exhibit 3.

term. In support of his argument Respondent emphasized community support, as suggested by letters of support assembled in 2008 for his Ohio sentencing,⁵ his post-traumatic stress disorder originating from his Vietnam combat experiences during 1971, and his obsessive-compulsive personality traits. Disciplinary Counsel argued Respondent should be disbarred.

Based upon the foregoing, the Commission makes the following:

Conclusions of Law

10. Respondent's criminal conduct affects his ability to practice law. The sole issue to be determined in these formal disciplinary proceedings is the extent of the final discipline to be imposed.

11. Disbarment is the form of discipline commensurate with Respondent's violation of the rules of professional conduct.

Recommendation

12. Respondent enjoyed a position of trust with the AMA. He was a member of its board of directors and served as its chair. His position enabled him to submit false travel expense claims which the AMA approved without the scrutiny otherwise given to travel expense claims from less trusted individuals. While no attorney-client relationship existed between Respondent and the AMA, the trust relationship between Respondent and the AMA shared a similarity to that between attorney and client. Respondent's disrespect, even disregard, for the proprieties required by his trust relationship with the

⁵ See Exhibit D.

AMA has obvious implications relating to his conduct in the attorney-client sphere. His conduct clearly violated his duty of honesty.


The Commission is mindful of Respondent's personality disorders and his combat-caused, post-traumatic stress disorder. However, those disorders are apparently long standing, perhaps since 1971. They did not adversely affect his work as a lawyer for two departments of Montana government over a period of 30 years. The Commission could not find clear or convincing evidence that Respondent's state of mind explained, ameliorated, or mitigated his dishonesty.

Respondent and the AMA agreed to liquidate the value of Respondent false travel expense claims for the sum of \$100,000. That is a significant measure of the actual injury Respondent's dishonest conduct caused. To his credit Respondent has repaid the \$100,000, a fact of no less significance to the Commission than to his Ohio sentencing court.

Based upon the foregoing the Commission unanimously recommends that Respondent be disbarred.

Dated this 12 day of July, 2010.

Commission on Practice

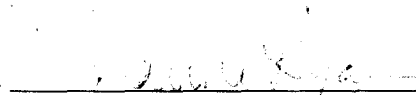
By 
Chairperson

CERTIFICATE OF MAILING

I hereby certify that on this 16th day of July 2010, I served a copy of the foregoing *Findings of Fact, Conclusions of Law, and Recommendation* by mailing a copy thereof to:

Gregory A. Jackson, Esq.
Attorney at Law
320 11th Avenue
Helena, MT 59601

Shaun Thompson, Esq.
Disciplinary Counsel
PO Box 1099
Helena, MT 59624



Shauna Ryan, Office Administrator
COMMISSION ON PRACTICE



COMMISSION ON PRACTICE OF THE SUPREME COURT
OF THE STATE OF MONTANA

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July 16, 2010

Ed Smith
Clerk of the Supreme Court
Justice Building, Room 323
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Helena, Montana 59620

RE: Dal Smilie - ODC File No. 10-049
SC Cause No. PR 10-0108

Dear Mr. Smith:

Enclosed please find one original and seven copies of the Commission's Findings of Fact, Conclusions of Law, and Recommendation in the above-matter.

Seven copies shall be distributed to the justices of the Montana Supreme Court and your office shall retain the original copy for filing. Respondent and Disciplinary Counsel have each been sent a copy, as per the certificate of mailing attached to the Findings.

Also enclosed are the exhibits and the original transcript of the hearing.

If you have any questions, please contact me.

Sincerely,

Shauna Ryan, Office Administrator
COMMISSION ON PRACTICE

Enc.

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Ed Smith
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